THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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AMOCO OIL COMPANY, now know as BP PRODUCTS NORTH AMERICA INC. ,)	Case No. 2:02CV00765 DS
Plaintiff,)	
vs.)	MEMORANDUM OPINION AND ORDER
PREMIUM OIL COMPANY, et al.,)	
Defendants.)	

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I. INTRODUCTION

Pending before the court for decision is Plaintiff's Motion to Dismiss Count II of Defendants' Counterclaim ("Count II").[1] Defendants, in Count II, claim that Plaintiff breached its duty of good faith and fair dealing with respect to various contracts entered into by the parties. Briefly stated, this dispute arises out of the alleged breach of several contracts between the parties. Pursuant to Branded Jobber Contracts ("Jobber Contracts"), Defendant Premium Oil Company ("Premium") purchased petroleum products from Plaintiff Amoco Oil Company ("Amoco"), now known as BP Products North America, Inc. (sometimes "BP" or "BP Amoco").

[1]The court, having reviewed the briefing submitted by the parties will rule on the motions without the assistance of oral argument, pursuant to DUCivR 7-1(f).

92

Premium and/or its sister company, Premoco,[2] (unless otherwise noted, collectively "Premium"), also entered into three Jobber Outlet Incentive Contracts ("Incentive Contracts") with Amoco in which Amoco agreed to pay incentive money to Premium to modernize its Vernal, Lehi and Cedar City, Utah, Amoco branded service stations.

Count II, in part, focuses on a Land Lease (the "Lease") dated May 17, 1990, between Amoco and Premoco. Under terms of the Lease, Amoco paid rent to Premoco. Amoco assigned the Lease to Western States Petroleum, Inc. ("Western States"), on or about July 18, 1995. Western States, in turn, assigned the Lease to Tri-Valley Distributing, Inc. ("Tri-Valley). Tri-Valley subsequently filed for Chapter 11 Bankruptcy and since has allegedly failed to pay rent and property tax when due. Premoco has demanded payment from BP Amoco.

Amoco merged with BP on December 31, 1998. On November 15, 2000, BP Amoco announced its intention to sell its Salt Lake City Refinery and related terminal and pipeline assets.

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[2]It is undisputed that Premoco and Premium are sister companies and that Premium operated under Premium's Jobber Contracts.

On June 22, 2001, Premium signed an agreement with Sinclair Oil to re-brand its three Amoco stations with brands of Sinclair Oil. On July 17, 2001, the sale of BP Amoco's retail marketing assets to Tesoro Petroleum Corporation was announced.

II. MOTION TO DISMISS STANDARD

When a motion to dismiss is filed, the burden is on the movant to prove that the non-movant can prove no set of facts in support of his claim which would entitle him to relief. Shoultz v. Monfort of Colorado, Inc., 754 F.2d 318 (10th Cir. 1985), cert. denied, 475 U.S. 1044 (1986); Conley v. Gibson, 355 U.S. 41 (1957). The court is to presume for purposes of considering the motion that all allegations by the non-movant are true and all reasonable inferences are made in favor of the non-movant. Lafoy v. HMO Colorado, 988 F.2d 97 (10th Cir. 1993); Miree v. DeKalb County, 433 U.S. 25 (1977). Legal conclusions, deductions, and opinions couched as facts are, however, not given such a presumption. Mitchell v. King, 537 F.2d 385 (10th Cir. 1976); Swanson v. Bixler, 750 F.2d 810 (10th Cir. 1984). The likelihood that the plaintiff may or may not prevail at trial is immaterial at the time of decision on a motion to dismiss. Boudeloche v. Grow Chem. Coatings Corp., 728 F.2d 759 (5th Cir. 1984).

III. DISCUSSION

A. Redundant Claim.

Plaintiff first claims that Count II "fails to state a claim for breach of the covenant of good faith and fair dealing upon which relief can be granted because the claim is redundant of a claim for breach of contract, which is not permitted under Utah law." (Mot. at 2). Plaintiff's position is that "because Count II ... sounds in breach of contract, which as to the rent claim has been separately alleged in Count I, it must be dismissed for a failure to state a claim upon which relief can be granted." (Mem. Supp. at 4). Plaintiff claims that A.I. Transport, Div. of Ins. Co. of State of Pa. v. Imperial Finance, Inc., 862 F. Supp. 345, 349 (D. Utah 1994) supports the proposition that "when a claim for breach of contract and one for breach of the covenant of good faith and fair dealing are identical, the claim regarding the implied covenant is subsumed within the contract claim." (Reply at 3)[3].

[3]The court reads the relevant portion A. I. Transport as simply standing for the proposition that "[w]here an express term establishes a right or power to be exercised in the sole discretion of one party, in Utah that right or power must be exercised consistent with the covenant of good faith." A.I. Transport, 862 F. Supp. at 348

At this juncture in the case the court is not persuaded that Count II is redundant of Count I. Count I claims breach of contract with respect to the Lease, whereas Count II claims breach of the covenant of good faith and fair dealing not only with respect to the Lease, but also with respect to the Jobber Contracts and the Incentive Contracts. Clearly the Jobber Contracts and Incentive Contracts are not pled in both Count I and Count II and, therefore, Count II does not appear to be redundant of Count I as to those contracts. With respect to the Lease, Defendants allege in Count I that "[b]y refusing to pay Premoco the agreed upon rent, and real estate taxes, BP is in breach of contract." (Countercl. at ¶ 31). In Count II Defendants, with respect to the Lease, allege that Plaintiff owed them "a duty of good faith and fair dealing ... with regard to the rent on the leased Premises". (Id. at ¶ 36). Case authority supports the proposition that a plaintiff "can properly allege a claim for breach of the implied covenant of good faith notwithstanding [its] concurrent claim for breach of the [contract]". Iadanza v. Mather, 820 F. Supp. 1371, 1388 (D. Utah 1993). In short, the court concludes that under the applicable standard of review, Plaintiff has failed in its burden as the moving party.

B. Failure to Plead Elements.

Plaintiff next contends that Count II "fails to state a claim for breach of the covenant of good faith and fair dealing upon which relief can be granted because Defendants' [sic] have failed to plead the elements and factual circumstances giving rise to such a claim. (Mot. at 2). Specifically, Plaintiff asserts that "Defendants are required to allege and prove that: (a) the agreements granted Amoco a sole discretionary right or power; (b) that Amoco exercised that discretion; and (c) that such discretion was exercised intentionally for the purpose of destroying Defendants' "'right to receive the fruits of the contract'". (Mem. Supp. at 5)(citation omitted).

Utah case law reflects, as Defendants assert, that under the covenant of good faith and fair dealing "'"each party impliedly promises that it will not intentionally or purposely do anything [that] will destroy or injure the other party's right to receive the fruits of the contract"'". Cig Exploration, Inc., v. State of Utah, 24 P.3d 966, 971 (Utah 2001)(quoting Brown v. Moore, 973 P. 2d 950, 954 (Utah 998)(quoting St. Benedict's Dev. Co. v. St. Benedict's Hosp., 811 P.2d 194, 199 (Utah 1991)). As Defendants note, they have alleged that Plaintiff owed them a duty of good

faith and fair dealing regarding their contracts, that Plaintiff breached that duty, and that they, Defendants, have been injured. Based on the pleadings before it, the court is not satisfied that Defendants' claim as pled is insufficient. Therefore, the court concludes that, under the applicable standard of review, Plaintiff has failed in its burden as the moving party.

IV. CONCLUSION

For the foregoing reasons, Plaintiff's Motion to Dismiss Count II of Defendants' Counterclaim is **DENIED**.

IT IS SO ORDERED.

DATED this 1st day of April, 2004.

BY THE COURT:

David Sam

DAVID SAM
SENIOR JUDGE
UNITED STATES DISTRICT COURT

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United States District Court
for the
District of Utah
April 7, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:02-cv-00765

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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